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November , 2006

Mark Gjelaj
U.S. Probation Officer
75 Clinton Street
Room 405
Brooklyn, NY 11201-4201

Re: U.S. v. Matin Siraj
05 Cr. 104 (NG)

Dear Mr. Gjelaj:

This letter is written to advise you of objections by the defense to the initial disclosure of the PSI dated November 17, 2006 and to requesat that these changes be incorporated into your final draft.

1. The cover page notes that Martin Stolar is appointed counsel. In fact, the attorneys, including Khurrum Wahid and Sean Maher, are retained.

2. The information contained in ¶ 7 is mostly incorrect. There is no indication in the record that Matin was targeted for the investigation based on a an anonymous tip about his statements. The CI was initially assigned in June 2003, based upon his allegedly volunteering for the task, to attend services at 2 mosques (the Noor mosque in Staten Island and the Bay Ridge mosque in Brooklyn) and to keep his ears open for and kind of unusual activity, with no specific individuals in mind. His first contact with Matin was in September, 2003 when he spoke with him in the bookstore where Matin worked (next to the Bay Ridge mosque) about possibly trying to obtain Islamic books from Egypt for sale in the store.

The CI had two contacts with Matin in September, 2003, one in October, two in November, and seven in December, a month in which he was at the Bay Ridge mosque on 21 different days. Similarly, In January 2004, there were eight contacts between the CI and Matin, while the CI was at the mosque on 30 occasions, often more than once a day. Thus, Matin was not the initial subject of the CI's activities. We enclose an exhibit used as an aid to the jury which shows the complete chronology.

3. The recordings of the defendant began in late June, 2004 and not in April and May as noted in ¶¶ 8 and 9. In fact, it is the defense's position that these were the crucial months when the CI convinced Matin to be willing to engage in violent conduct - we sincerely wish that there had been recordings in these two months.

4. The scouting out and drawings of the 34th Street subway station noted in ¶ 19 were conducted at the request of and under the direction of the CI.

5. It should be noted in ¶ 20 that the backpacks were provided by the CI, not by either Matin or Elshafay.

6. We completely dispute the discussion in the "Adjustment for Obstruction of Justice" section of the report. The examples given in ¶¶ 34 and 35 do not represent untruthful testimony but are instead the defendant's recollections about things he said and did and not the result of a deliberate attempt to lie or mislead.

. 7. Indeed, you note that the defendant's attempt to argue that he was induced by the CI in and of itself warrants an adjustment for obstruction of justice in ¶ 39 because the "contention that he was entrapped was contradicted by tape recording, the informer and the undercover officer." As noted above, there were no tape recordings in April and May, 2003, the months the defense contended the inducement took place. Further, that the testimony of the CI differed from that of the defendant does not mean that the defendant lied. The testimony of the undercover was admitted for the purpose of the government showing that the defendant was "predisposed" to commit the charged crimes and goes to a defense claim that entrapment took place. Merely because the jury rejected the entrapment defense does not mean that attempting to establish the defense constitutes perjury.

8. We also dispute the "Adjustment for Acceptance of Responsibility" section of the report. In his hearing and trial testimony, the defendant clearly accepted responsibility, admitting that the 34th Street plan was his and that he was an active co-conspirator. Where the defendant "puts the government to its burden of proof at trial" in an entrapment case, that defendant, as here, ordinarily admits the conduct in question. The acceptance of responsibility was not an "early" one such as a plea of guilty but he still qualifies for the 2 level reduction of USSG § 3E1.1.

9. We object to ¶ 67's reference to the government's allegation that the

defendant lied on an immigration document in 2004. Without some specific reference to what the lie allegedly is, we cannot respond and therefore the sentence should be removed.

10. It cannot be said, as ¶68 does, that the defendant's failure to file tax returns constitutes "Other Criminal Conduct". What constitutes a criminal tax infraction is much more complicated than merely a failure to file, depending on the amount of income earned and the taxpayer's intent. Without more, this section should be stricken.

11. In ¶ 81 there is an indication that an MDC record indicates that the defendant has neither requested or received any mental health treatment. In fact, during the 14 months that the defendant spent in the Special Housing Unit he regularly received mental health intervention and since he has been in population he has been seen by an MDC psychiatrist.

12. The defendant's physical condition involves a severe rash and bronchial severe coughing. He has, in fact, sought medical treatment at MDC and, contrary to the statement in ¶ 84, he has signed up for "sick call" since April 15, 2006 but has not been seen with the frequency required by his conditions. As to the blurry vision, this has finally been corrected, as Matin finally got eyeglasses after requesting them for two years.

We would appreciate your prompt attention to the corrections outlined above. The sentencing date has been changed to December 15, 2006 at 11 A.M.

Very truly yours,

Martin R. Stolar
Khurrum Wahin
Sean Maher

MRS/s
enc.
cc: Hon Nina Gershon (via ECF and hard copy)(w/o enclosure)
Marshall Miller, Esq & Todd Harrison, Esq. (Via fax and ECF)(w/o enclosure)